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South Carolina Public Service Commission
 101 Executive Center Drive #100
 Columbia, SC 29210

RE: Public comment on proposed regulation, "Protection of Customer Data."

Dear Commissioners:

On November 27, 2019, the Office of Regulatory Staff (ORS) filed a Petition for Rulemaking with the Public Service Commission for the purpose of promulgating a regulation to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities, absent a customer's direct consent.¹

We would like to take this opportunity to comment on the proposed regulation. In relevant part, the proposed regulation would, with limited exceptions, prohibit public utilities from disclosing personally identifying information, account information, billing history, address, and other information to any third party without the customer's consent.

First, we would like to address the need for this regulation, like other state privacy laws and regulations, to recognize and provide express exceptions for consumer protections that currently exist under federal law, including the Fair Credit Reporting Act ("FCRA"), which allows consumer data to be collected and shared for certain permissible purposes. Second, we recommend that this regulation include a fraud prevention exception, so that utility providers can use consumer information to help both businesses and government prevent fraud.

SUPPORT FOR AN EXPRESS FCRA EXEMPTION

The proposed regulation, titled "Protection of Customer Data," states in Section E (3): "This section shall not preclude a utility from disclosing customer data where necessary to provide safe and reliable service and as required or permitted under state or federal law or by an order of the commission."² For the reasons stated below, we recommend that this provision be revised as follows to include an express exemption for disclosures of customer information permitted or contemplated by the FCRA, particularly for purposes of furnishing information to a consumer

¹ Public Service Commission proposed regulation, "Protection of Consumer Data," <https://dms.psc.sc.gov/Attachments/Matter/a1fcfad7-3db5-4d1a-8333-e0d975d85fc7>, last accessed March 2, 2020.

² *Id.* (Protection of Customer Data 103, E (3)).

reporting agency, as defined by 15 U.S.C. Sec. 1681a(f), or procuring a consumer report for a permissible purpose under the FCRA.

Importance and History of the FCRA

It is critically important for state privacy laws and regulations to recognize consumer protections that currently exist under federal privacy law. Any state privacy law should include clear and concise language exempting consumer data already regulated under the federal FCRA, which this regulation currently fails to make clear. The FCRA provides important and necessary protections to consumers, lenders, government agencies, law enforcement, volunteer organizations, and businesses that rely on full, complete and accurate consumer reports to meet their needs and expectations and make informed decisions. An unclear or incomplete FCRA exemption risks negatively impacting the integrity of the consumer reporting ecosystem, and therefore the safety and soundness of the public and commercial utility economies.

Passed in 1970, the FCRA is the country's first national privacy law. The law has been amended many times over the years to ensure consumer protections are properly maintained as technology and use of consumer data has evolved. The FCRA has long held robust consumer protections including the right:

- To know what information is collected about consumers,
- To know who has accessed consumer information,
- To know if information included in a consumer report results in an adverse action, and
- To correct and delete inaccurate information on a consumer's file.

The FCRA provides for strictly controlled permissible purposes to limit access to consumer reports by data users. The FCRA also affords substantial identity theft prevention and mitigation rights for consumers and duties for businesses. For enforcement purposes, the FCRA provides for private rights of action, and enforcement by state attorneys general, the Consumer Financial Protection Bureau (CFPB), and the Federal Trade Commission (FTC).

Impact of using FCRA compliant information

If state privacy and consumer protection laws or regulations were to limit the accuracy, access, or use of consumer information for FCRA purposes, consumers would ultimately be negatively impacted. Consumer information regulated under existing federal statute helps consumers achieve their financial goals, such as obtaining mortgages and car loans, receiving student aid, opening a checking account, and applying for and receiving utilities. Failing to specifically recognize the importance of this well-established federal statute and its existing

consumer data protections could result in unintended consequences, such as higher interest rates, limiting consumer's access to affordable credit, and delaying consumer's approval and receipt of utilities.

It is recommended that state privacy and consumer protection laws completely exempt the FCRA to protect consumers, lenders, government agencies, law enforcement, volunteer organizations, and businesses that rely on the FCRA to meet their needs and expectations and make informed decisions. An unclear or incomplete FCRA exemption risks negatively impacting the integrity of consumer reporting ecosystem, and therefore the safety and soundness of the public and commercial utility economies.

We believe it is necessary to amend Section E (3) to read:

"(3) This section shall not preclude a utility from disclosing customer data (i) where necessary to provide safe and reliable service; (ii) as required or permitted under state or federal law, including disclosures pursuant to and permitted by the Fair Credit Reporting Act section 1681 et seq., Title 15 of the United States Code, including for purposes of furnishing account and payment history information to and procuring consumer reports from a consumer reporting agency as defined by 15 U.S.C. Sec. 1681a(f); or (iii) as required or permitted by an order of the commission."

Support Fraud Prevention exception

Fraud in the public and private sectors is hard to quantify but cannot be understated. Preventing fraud in the government and commercial sectors is an ongoing struggle but is imperative. The private sector has access to consumer information that can help both business and governments alike prevent fraud.

Preventing and solving criminal activity

Then-FBI Director Louis Freeh testified before Congress in 1999 and noted that in 1998, his agency made more than 53,000 inquiries to commercial on-line databases "to obtain public source information regarding individuals, businesses, and organizations that are subjects of investigations." This information, according to Director Freeh, "assisted in the arrests of 393 fugitives, the identification of more than \$37 million in sizable assets, the locating of 1,966 individuals wanted by law enforcement, and the locating of 3,209 witnesses wanted for questioning."³

Law enforcement agencies routinely see the benefit of information provided by commercial sources. This is true in big cities, small towns, and in between. Police in Hutchinson, Kansas (pop. 41,000) have harnessed the power of a commercial service. This program pulls together diffuse data

³ Hearing before the Senate Comm. on Appropriations Subcomm. for the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies, March 24, 1999 (Statement of Louis J. Freeh, Director of the Federal Bureau of Investigation).

points to serve law enforcement agencies. Police Chief Dick “Heitschmidt said the system narrowed down an area where a suspect in a string of burglaries lived. At first, Heitschmidt said officers didn’t believe the software could determine an area with any accuracy, until they later found the suspect living in the same area.” The Hutchinson News said that the reports from commercial services using privately held and public records will “change the way police patrol [the city]”, “saves the department time[,] and could possibly even save lives.”⁴

Locating and collecting delinquent child support

The Association for Children for Enforcement of Support reports that public record information provided through commercial vendors helped locate over 75 percent of the “deadbeat parents” they sought.⁵

Preventing identity theft

“We [the Texas Attorney General’s Office] need the private sector to help protect consumers and help combat identity fraud. Moreover, we also need the private sector to assist law enforcement.”⁶

Preventing public benefit fraud; saving taxpayer money

Starting in 2011, a national consumer reporting agency partnered with the Maryland Department of Human Resources to cut down on public benefits fraud. Because of this partnership, there was a 200% reduction on the Department’s payment error rate for its Supplemental Nutrition Assistance Program (SNAP).⁷

Preventing fraud in government and business is an ongoing struggle, but it is made possible and more effective by properly using consumer data.

We believe the Public Service Commission should allow utility companies to use and share consumer data for fraud prevention purposes. We recommend amending Section E(2) to read:

⁴ Stavola, Michael, *Police in Hutchinson, Kan., See Results Thanks to New Software*; From locating suspects to potential accident sites, data analytics tools from are giving authorities a leg up, The Hutchinson News, March 8, 2018, <http://www.govtech.com/public-safety/Police-in-Hutchinson-Kan-See-Results-Thanks-to-New-Software.html>.

⁵ Information Privacy Act, Hearings before the Comm. on Banking and Financial Services, House of Representatives, 105th Cong., 2nd Sess. (July, 28, 1998) (statement of Robert Glass).

⁶ Amicus Argument of James Ho for State of Texas, *Taylor v. Acxiom Corp.*, U.S. Court of Appeal (5th Cir.) Case Nos. 08-41083, 41180, 41232, (Nov. 4, 2009).

⁷ Rebecca Lessner, Credit rating firm helps state validate welfare recipients, *Maryland Reporter*, June 25, 2015, <http://marylandreporter.com/2015/06/30/credit-rating-firm-helps-state-validate-welfare-recipients/>.

“(2) This section shall not preclude a utility from disclosing a customer’s data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, or for fraud prevention purposes, provided that the utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer’s prior consent to that use.”

CONCLUSION

In conclusion, we ask that the Public Service Commission consider amending Section E(2) to include a fraud prevention exception, and amend Section E(3) to recognize the FCRA as a relevant and preemptive federal law. Thank you for your time and attention on this important matter and I would be happy to answer any questions the Commission may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah M. Ohs", is written over the printed name.

Sarah M. Ohs

Director of Government Relations